UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,854	12/30/2003	Janko Budzisch	6570P055	9420

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EXAMINER
HAMZA, FARUK

ART UNIT	PAPER NUMBER
2455	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	**Applicant(s)**
Office Action Summary	10/749,854	BUDZISCH ET AL.
	Examiner	**Art Unit**	
	FARUK HAMZA	2455	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>26 September 2008</u>.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-8,10-18,20-28 and 30</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-8,10-18,20-28 and 30</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
   application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date <u>9/26/08</u>

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____

Response to Amendment

1.   This action is responsive to the amendment filed on September 26, 2008.

Claim 11 has been amended. Claims 1-8, 10-18, 20-28 and 30 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

2.   Claims 1-8, 10-18, 20-28 and 30 are rejected under 35 U.S.C. 112,

second paragraph, as being indefinite for failing to particularly point out and

distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 11 and 21 refer to "IS". It is not clear what "IS" stands for,

making the cited claims indefinite.

All dependent claims are rejected as having the same deficiencies as the

claims they depend from.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

3.   Claims 1-3, 11-13 and 21-23 are rejected under 35 U.S.C. 102(e) as being

anticipated by the U.S Patent Application Publication No. 2004/0139194 A1 by

Naganathan, hereinafter Naganathan.

           Regarding claim 1, Naganathan teaches a method, comprising: repeatedly

receiving request messages at a testing application running on a server or servlet

engine ([0012] - users are regularly contacting the service), said repeatedly

receiving occurring during execution of a testing scenario ([0013] - "dummy

transactions" indicate testing, rather than "real life" transactions. [0044] - the

transactions are synthetic), each of said request messages identifying the same

set of software components that are: a) servable and/or invokable by said server

or servlet engine ([0044] - modules are use loadable); b) associated with the

same said testing scenario ([0044] - web service testing scenario or calendar

service testing scenario); and, c) used by a same business logic process within

an IS infrastructure ([0044] - web service testing scenario or calendar service

testing scenario); and, said testing application, in response to each of said

request messages in executing said testing scenario, performing the following:

testing each of said one or more software components for availability ([0012] -

availability testing) and preparing and sending onto a network a response

message to report availability or unavailability for each of said one or more

software components to an entity that sent said response message's

corresponding request message ([0013] - users are informed of availability or

unavailability of a service being tested), wherein, at least one of said software

components requires a login procedure for its availability test and each of said

request messages include a userid for said login procedure ([0034] - user

authentication).

Regarding claim 2, Naganathan teaches the method of claim 1 wherein at

least one of said software components further comprises a web page and said

testing for availability of said web page further comprises attempting to fetch said

web page ([0044] and [0052]- web service. [0045] - support for HTTP protocol).

Regarding claim 3, Naganathan teaches the method of claim 2 wherein

said web page's URL is identified in each of said request messages ([0045] -

support for HTTP protocol).

Claims 11-13 are rejected in view of the above rejection of claims 1-3.

Claims 11-13 are essentially the same as claims 1-3, except that they set forth

the invention as a computer program product rather than a method, as do claims

1-3.

Claims 21-23 are rejected in view of the above rejection of claims 1-3.

Claims 21-23 are essentially the same as claims 1-3, except that they set forth

the invention as a system rather than a method, as do claims 1-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the
invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 4-8, 10, 14-18, 20, 24-28 and 30 are rejected under 35 U.S.C.

103(a) as being unpatentable over Naganathan in view of the U.S. Patent No.

6,842,891, issued to Zhang, hereinafter Zhang.

        Regarding claim 4, Naganathan teaches the method of claim 1.

        Naganathan does not explicitly teach that the method is further comprising

creating a request object from the content of said request message with a

request message class.

        However, Zhang, in analogous art, directed to distributed test framework,

teaches a method further comprising creating a request object from the content

of said request message with a request message class (Abstract, 2:53-61 -

dynamic attribute classes. 4:18-31 - implementation of the invention on Java

platform. Java is an object oriented language. See also 4:32-38).

        Therefore, it would have been obvious to one of ordinary skills in the art at

the time the invention was made to combine the teachings of Zhang regarding

implementation of the invention in Java with the teachings of Naganathan in

order to enhance cross-platform compatibility of Naganathan's invention.

Naganathan, combined with the cited teachings of Zhang, is hereinafter referred

to as NZ1.

        Regarding claim 5, NZ1 teaches the method of claim 4 further comprising

creating a scenario object from said request object with a scenario object class

(Zhang, 4:18-31 - implementation of the invention on Java platform. Java is an

object oriented language. See also 4:32-38).

Regarding claim 6, NZ1 teaches the method of claim 5 further comprising creating a response message object with a response message class (Zhang, 4:18-31 - implementation of the invention on Java platform. Java is an object oriented language. See also 4:32-38).

Regarding claim 10, NZ1 teaches the method of claim 1 wherein said testing of each of said one or more software components is performed by a servlet (Zhang, 5:28-37).

Regarding claim 7, Naganathan teaches the method of claim 1. Naganathan does not explicitly teach such method wherein said response message is an XML document.

However, Zhang, in analogous art, directed to distributed test framework, teaches a method wherein said response message is an XML document (7:50-59 - an Extensible Markup Language (XML) formatted messages).

Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to combine the teachings of Zhang regarding implementation of Extensible Markup Language (XML) formatted messages with the teachings of Naganathan in order to make the message format completely compatible with Java and completely portable. Naganathan, combined with the XML teachings of Zhang, is hereinafter referred to as NZ2.

Regarding claim 8, NZ2 teaches the method of claim 7 wherein each of said request messages is an XML document (7:50-59 - an Extensible Markup Language (XML) formatted messages).

Claims 14-18 and 20 are rejected in view of the above rejection of claims

4-8 and 10. Claims 14-18 and 20 are essentially the same as claims 4-8 and 10,

except that they set forth the invention as a computer program product rather

than a method, as do claims 4-8 and 10.

Claims 24-28 and 30 are rejected in view of the above rejection of claims

4-8 and 10. Claims 24-28 and 30 are essentially the same as claims 4-8 and 10,

except that they set forth the invention as a system rather than a method, as do

claims 4-8 and 10.

Response to Arguments

5.   Applicant's arguments have been fully considered but they are not

persuasive.

In the remarks applicant argues in substance that; A) Naganathan does

not teach that *messages are repeatedly sent from the server layer to the agent*

layer.

In response to A) Applicant's argument is inconsistent with claim

limitations. This/These limitation(s) are not found in the claims. Claimed subject

matter not the specification is the measure of the invention. Disclosure contained

in the specification cannot be read into the claims for the purpose of avoiding

prior art. In re Sporck, 55 CCPA 743, 386 F .2d 924, 155 USPQ 687 (1986); In re

Self, 213 USPQ 1,5 (CCPA 1982); In re Priest, 199 USPQ 11, 15 (CCPA 1978).

B) Naganathan does not teach the presence of a userid within the

messages sent from the server layer to the agent layer.

In response to B) Applicant's argument is inconsistent with claim limitations. This/These limitation(s) are not found in the claims. Claimed subject matter not the specification is the measure of the invention. Disclosure contained in the specification cannot be read into the claims for the purpose of avoiding prior art. In re Sporck, 55 CCPA 743, 386 F .2d 924, 155 USPQ 687 (1986); In re Self, 213 USPQ 1,5 (CCPA 1982); In re Priest, 199 USPQ 11, 15 (CCPA 1978).

Conclusion

6.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faruk Hamza whose telephone number is 571-272-7969. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached at 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll –free).

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Patent Examiner

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